MT LEGISLATIVE HISTORY

Chapter 360 1972

Bill H (S) 53 Original bill & hist. ✓C

H. Committee on Judiciary

Hearing Date(s) Mar 08 ✓C
Mar 22 ✓C
_____ ___C
_____ ___C

Date Out Mar 22 ___C

S. Committee on Judiciary

Hearing Date(s) Jan 12 ✓C
Jan 20 ✓C
_____ ___C
_____ ___C

Jan 20 ✓C

BEST COPY AVAILABLE

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LC 0135/01

Senate BILL NO. 53

INTRODUCED BY Eve Franzel

(Interim Committee on Judiciary Bill)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE ESTABLISHMENT OF SELF-INSURANCE PROGRAMS FOR STATE AND LOCAL GOVERNMENTAL ENTITIES WITH CERTAIN GUIDELINES; TO CLARIFY THE MEANS BY WHICH CLAIMS AGAINST GOVERNMENTAL ENTITIES MAY BE SETTLED; TO CLARIFY THE MEANS BY WHICH JUDGMENTS AGAINST GOVERNMENTAL ENTITIES MAY BE SATISFIED; AMENDING SECTIONS 82-4303, 82-4305, 82-4306, 82-4309, 82-4311, 82-4312, 82-4318, AND 82-4319, R.C.M. 1947; AND REPEALING SECTIONS 82-4313 THROUGH 82-4317, 82-4326, 83-701 THROUGH 83-706, 83-706.1, AND 83-707, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4303, R.C.M. 1947, is amended to read as follows:

"82-4303. Comprehensive insurance plan for state -- risks insured -- deductible insurance. (1) The department of administration ~~shall be~~ is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined ~~herein~~ in this chapter.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and ~~shall have the authority to~~ may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, and fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part. ~~Such a plan shall never have a deductible amount in excess of twenty-five thousand dollars ($25,000) per occurrence, and shall contain provisions allowing for an aggregate deductible amount not to exceed two hundred fifty thousand dollars ($250,000) annually under each type of insurance as enumerated in the preceding paragraph.~~"

Section 2. Section 82-4305, R.C.M. 1947, is amended to read as follows:

"82-4305. Apportionment of costs -- creation deductible reserve ~~if deductible plan elected~~. (1) The department of administration shall apportion the costs of all insurance purchased under this ~~act~~ chapter to the individual state participants, and the costs shall be paid

to the department subject to appropriations by the legislature.

(2) The department of administration, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan, until such time as a deductible reserve is established. ~~In the amount of two hundred fifty thousand dollars ($250,000), the amount of the total aggregate annual deductible is created.~~ In each subsequent year, the department ~~shall be authorized to~~ may charge a sufficient amount over the actual cost of the deductible insurance to replenish such deductible reserves.

(3) The department of administration may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion, the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund may be used only to pay claims under this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund."

Section 3. Section 82-4306, R.C.M. 1947, is amended to read as follows:

"82-4306. Political subdivisions. (1) All political subdivisions of the state ~~shall have the authority to~~ may procure insurance ~~under this act~~ separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose. Proceeds of the fund may be used only to pay claims under this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund."

Section 4. Section 82-4309, R.C.M. 1947, is amended to read as follows:

"82-4309. Political subdivision tax levy to pay premiums. Notwithstanding any provisions of law to the contrary, all political subdivisions ~~shall have authority to~~ may levy an annual property tax in the amount necessary to pay fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby; ~~,~~ provided, that the revenues derived therefrom may not be used for any other purpose."

Section 5. Section 82-4311, R.C.M. 1947, is amended to read as follows:

"82-4311. Filing of claims against state -- time of filing. All claims against the state arising under the provisions of this act shall be presented to and filed with the ~~secretary of state within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later. A fee of ten dollars ($10) shall be paid to the secretary of state at the time the claim is presented for filing~~ department of administration."

Section 6. Section 82-4312, R.C.M. 1947, is amended to read as follows:

"82-4312. Filing of claims against political subdivisions -- time for filing. All claims against a

political subdivision arising under the provisions of this act shall be presented to and filed with the clerk or secretary of the political subdivision ~~within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later.~~"

Section 7. There is a new R.C.M. section that reads as follows:

Limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

Section 8. Section 82-4318, R.C.M. 1947, is amended to read as follows:

"82-4318. Compromise or settlement of claim against political subdivision. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any. A settlement involving a self-insurance reserve fund or deductible reserve fund must be approved by the district court where the claim is filed."

Section 9. Section 82-4319, R.C.M. 1947, is amended to read as follows:

"82-4319. Compromise or settlement of claim against state. The department of administration may compromise and

settle any claim allowed by this act, subject to the terms of insurance, if any. A settlement involving the self-insurance reserve fund or deductible reserve fund must be approved by the district court of Lewis and Clark County."

Section 10. There is a new R.C.M. section that reads as follows:

Judgments against governmental entities except state -- how satisfied. (1) A political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(a) insurance;

(b) the general fund or any other funds legally available to the governing body;

(c) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

(d) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any

such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

(2) No penalty or interest may be assessed against any governmental entity as a result of a delayed payment of a judgment liability.

Section 11. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Repealer. Sections 82-4313 through 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and 83-707, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 566-77

FISCAL NOTE

Form BD 15

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 53 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to authorize establishment of self-insurance programs for state and local governmental entities with certain guidelines; to clarify the means by which claims against governmental entities may be settled; to clarify the means by which judgments against governmental entities may be satisfied.

ASSUMPTIONS:

1. No deductible coverage will be purchased, nor will additional deductible reserves be established, for FY 78 and FY 79.
2. Only medical and hospital malpractice risks will be self insured for FY 78 and FY 79.
3. Medical and hospital malpractice can be self insured over the biennium at the present premium rate of $162,000 per year.
4. Governmental liability insurance rates will increase 25% in 1978 and 20% in 1979.

FISCAL IMPACT:

Given a step-by-step approach with the first step being the self insurance of medical and hospital malpractice, any costs can be absorbed with the projected budget for FY 78 and FY 79. This is the approach anticipated by the Dept. of Administration. To self insure all liability for the state immediately would require a reserve fund in excess of $2,500,000, which represents two years liability insurance costs at FY 77 rates. The one-shot requirement would have to come from the General Fund. If built up over a period of years from user departments, the accumulation of the reserve could be spread to the various funds.

LOCAL IMPACT:

No information is available to prepare an estimate of the fiscal impact on local government; however, assumptions and trends similar to those indicated for the state can be expected.

LONG-RANGE EFFECT:

All net self-insurance reserves after paid and incurred losses can be considered profit. This money can be used to offset future insurance premiums, or can be utilized to fund reserves for additional self-insured risks. Although no detailed estimate is possible, over a long period of time, self-insurance reserves should out-perform the insurance market by a considerable degree.

Richard L. Ismay

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-23-77

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
S.B. 9	1-3-77	1-11-77	1-15-77			1-15-77			
S.B. 12	1-3-77	2-16-77	2-18-77			2-18-77			
S.B. 20	1-3-77	1-7-77	1-7-77			1-7-77			
S.B. 23	1-11-77	1-18-77	1-29-77		1-29-77				
S.B. 23	Rereferred 2-1-77	2-4-77				2-4-77			
S.B. 27	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 30	1-3-77	1-11, 1-13, 1-17-77	1-17-77			1-20-77			
S.B. 32	1-3-77	Duplicate of S.B. 40	2-10-77		2-10-77				
S.B. 33	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 34	1-3-77	1-17, 1-18, 1-28, 1-29-77	1-31-77			1-31-77			
S.B. 37	1-4-77	1-14-77	2-10-77			2-10-77			
S.B. 40	1-5-77	1-12-77	1-20-77	1-20-77					
S.B. 41	1-5-77	1-12 & 1-20-77	2-18-77			2-18-77			
S.B. 42	1-5-77	1-12 & 1-20-77	1-20-77	1-20-77					
S.B. 43	1-5-77	1-12 & 1-20-77	1-20-77			1-20-77			
S.B. 53	1-6-77	1-12 & 1-20-77	1-20-77	1-20-77					

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 12, 1977

The meeting of the Judiciary Committeè was called to order by Chairman Jean Turnage on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members were present with the exception of Senator Roberts who was excused. Senator Warden was excused at 10:00 a.m. as she had to testify at another meeting.

The following witnesses were present to testify:

Representative John Vincent - District 78
Glen Drake, Helena attorney - Montana League of Cities and Towns and the American Insurance Association
Gregg McCurdy - Montana Association of Counties
W. Boyce Clarke - Independent Insurance Agents of Montana
Arnold Kuenning - Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana
Mike Young, Attorney - Department of Administration
Bob Biggerstaff - Montana Association of Conservation Districts
Gregg Morgan, Bozeman attorney - Montana State Bar Association
Robert Corcoran, Chief Tax Counsel - Montana Department of Revenue
William L. Romine - Montana attorney
John Bell, Helena - attorney

CONSIDERATION OF SENATE BILLS 40, 41, 42, 43 and 53:

Senator Towe requested that the bills be taken up in the following order: S.B. 43, 53, 41, 42 and 40. The request was granted by Chairman Turnage. Sen. Towe noted S.B. 32 is identical to S.B.40

Senator Towe then explained each bill in the above order. While doing this, he told the committee that these bills, in order to pass, would require a two-thirds vote by each House. This is an exception to the general rule governing sovereign immunity.

Representative Vincent, appearing as a proponent of S.B. 43, stated that he supported this bill with one exception and that is relative to the limits in subsection (b) on pages 4 and 5. He offered the committee two suggested alternatives which he thought would improve the bill. He was then thanked by the Chairman for his testimony.

Other proponents of the bills appearing and offering testimony to the committee were:

Glen Drake, Helena attorney, representing the American Insurance Association and the Montana League of Cities and Towns;

Gregg McCurdy, representing the Montana Association of Counties, who had one question on S.B. 43, page 5, line 3, regarding the words "taxing districts";

W. Boyce Clarke, representing the Independent Insurance Agents of Montana, who presented a prepared statement on each bill to the committee (see attached). Mr. Clarke also commended the subcommittee and their staff on doing a very good job on these bills.

Arnold Kuenning, an Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana. Mr. Kuenning presented the committee with a prepared statement. (See attachment)

Mike Young, Attorney for the Montana Department of Administration;

Bob Biggerstaff, representing the Montana Association of Conservation Districts, who said that they are proponents but are concerned that they might not be included.

Gregg Morgan of the State Bar Association said that they wished to applaud the committee and support the work done.

Opponents appearing were:

Bob Corcoran, representing Bill Groff, Director of the Department of Revenue, who said the Department of Revenue was concerned with a couple of items in the bills, namely, in Title 84 the portion referring to claims of refunds of taxes and and the portion on quiet title actions in S.B. 40. Senator Towe said that was just a deletion of language.

Bill Romine, attorney, representing only himself. Mr. Romine presented the committee with a prepared statement on S.B. 41. (Attached)

At this time, Gregg Morgan of the State Bar of Montana testified before the committee, suggesting amendments or withdraw S.B. 41 as it may be unconstitutional as a breach of contract. (See Exhibit 1)

John Bell, a Helena attorney who said he believes S.B. 41 is clearly unconstitutional.

Mike Young, Attorney for the Montana Department of Administration, at this time said that his previous comments were only in regard to S.B. 43, 53 and 40.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 1/12/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		E Ex
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		E Ex E 10:00

Each day attach to minutes.

SENATE BILL NO. 53

COMMENT:

I DON'T SUPPOSE THERE IS ANY GROUP ANYWHERE WHO IS AS AWARE OF THE CONFUSION AND FRUSTRATION SUFFERED BY PEOPLE IN GOVERNMENT WHO HAVE TO MAKE DECISIONS ABOUT LIABILITY INSURANCE TODAY AS ARE MONTANA INDEPENDENT AGENTS. MOST OF US ARE DEEPLY INVOLVED. RIGHTFULLY SO AS COMMISSIONS FOR THIS FORM OF COVERAGE MAKE UP A PART OF OUR LIVLIHOOD. WE HAVE WORKED HARD TO OBTAIN COVERAGES IN LIMITS TO SATISFY OUR NEW CONSTITUTION AND AFFECTED STATUTES. BY AND LARGE, IN THE COMMUNITIES, COVERAGES ARE AVAILABLE BUT THE MARKET IS TIGHT. FOR THE STATE, THERE ARE COMPOUNDED AND COMPLEX PROBLEMS. THE EFFORT TO OBTAIN FLEXIBILITY ON BEHALF OF THE STATE EVIDENCED THROUGH CLARIFICATION OF EXISTING LAW, AMENDMENT AND REPEAL UNDER SB-53 APPEAR ENTIRELY JUSTIFIED AT THIS TIME.

THERE ARE JUST A COUPLE OF COMMENTS I WOULD LIKE TO MAKE ON BEHALF OF OUR PEOPLE:

FIRST, EVEN THOUGH THIS PACKAGE OF BILLS IS FAVORABLY ENACTED, I WOULD LIKE TO ECHO TO SOME EXTENT, THE FINAL PARAGRAPH ON PAGE 28 OF THAT SECTION OF THE STUDY ENTITLED "INSURANCE OF GOVERNMENT LIABILITY RISKS", WHICH READS:

> "WHATEVER THE ULTIMATE SOLUTION, THE INSURANCE OF GOVERNMENT LIABILITY RISKS IS LIKELY TO BE AS FRAUGHT WITH DIFFICULTY IN THE FUTURE AS WILL BE THE INSURANCE OF OTHER LIABILITY RISKS. THE LACK OF IMMUNITY OR LIMITS ON LIABILITY WILL PROBABLY HAVE LITTLE EFFECT ON THE TOTAL INSURANCE MARKET PRICE."

FRANKLY, I AM SOMEWHAT MORE OPTOMISTIC ON THE SUBJECT BECAUSE, BY ESTABLISHING SOME LIMITATIONS, SOME OPEN ENDS ARE CLOSED AND THIS SHOULD, IN DUE COURSE, HAVE A GOOD EFFECT ON PRICING AND AVAILABILITY, - OTHER FACTORS BEING EQUAL. IT WILL TAKE TIME.

SECOND, THE ESTABLISHING OF SPECIAL FUNDS IN GOVERNMENT HAS ALWAYS BEEN A WORRY TO ME. HISTORY, MORE OFTEN THAN NOT, HAS PROVEN THESE FUNDS HAVE A WAY OF NOT BEING THERE WHEN SORELY NEEDED.

AND LAST, MY PEOPLE ARE INDEPENDENT TAX PAYING, COMMUNITY ORIENTED BUSINESSMEN. WE WOULD HOPE THAT IN ANY WAY POSSIBLE, CONSIDERATION OF TAX SUPPORTED SELF INSURANCE FUNDS BE LIMITED TO THE EXIGENCIES OF THE PROBLEMS AT HAND. THAT WHEREVER POSSIBLE, INDEPENDENT AGENTS BE ENCOURAGED TO PROVIDE NEEDED COVERAGES THROUGH THEIR MARKETS.

W. BOYCE CLARKE, LEGISLATIVE COUNSEL
INDEPENDENT INSURANCE AGENTS OF MONTANA

Chairman Turnage asked her if she had seen Senate Bill 58. Ms. Dieziger said that she did not feel it covered everything contained in S.B. 95.

There were no opponents to this bill present.

In answer to questions of the Chairman regarding the definition of peer review committee and audit committee, Mary Mouat of St. Peters Hospital and the Montana Nurses Assn., said that a peer review committee deals with somebody within your own profession and that the audit committee is one set up to deal with specific problems and would set certain standards of care. She further testified that the audit committee is not covered by a peer review committee.

At this time, Chairman Turnage told the witnesses that the committee would ask for the return of Senate Bill 58 and try to make one bill which would be acceptable to them. He assigned Senators Olsen and Lensink to work on this matter. The witnesses were then thanked for appearing and excused.

DISPOSITION OF SENATE BILLS 40, 41, 42, 43 and 53:

SENATE BILL 43 - Senator Towe moved to amend page 5, section 8, line 4, following "may" by inserting ", in its sole discretion," and following "for" by inserting "noneconomic damages or";

And to further amend page 5, section 8, on line 6, following "section" by inserting ", or both,";

And to further amend page 5, section 8, on line 7, following "judgment." by inserting "No insurer is liable for such noneconomic damages or excess economic damages unless specifically authorized in the contract of insurance."

The above motion carried unanimously.

Senator Towe then moved that Senate Bill 43, as amended, DO PASS. The motion carried unanimously.

SENATE BILL 53 - Senator Towe moved DO PASS. The motion carried unanimously.

SENATE BILL 41 - Senator Lensink moved DO NOT PASS. As a substitute motion, Senator Regan moved to pass consideration for the day. The substitute motion of Senator Regan carried on a vote of 5 - 3. (See attached voting record)

The Chairman assigned a subcommittee of one, namely, Senator Regan, to research S.B. 41 and report back in about ten days.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 1/20/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

STANDING COMMITTEE REPORT

January 20, 19 77

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 53

Respectfully report as follows: That SENATE Bill No. 53

DO PASS

SEN. JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

JUDICIARY COMMITTEE

45th __ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 560	require the dept of natural resources and conservation to study cooney dam, the dam spillway etc.	1-27	Burnett	Tues 1	"WATER" do not pass	2-16
HB 573	to provide for the use of navigable waters in Mont. for recreational purposes, etc.	1-27	Huennekens	Thursday 3rd 10 a.m.	"WATER" do pass as amended	2-9
SB 42	to continue certain immunities from suit established by certain statutes by reenacting the statutes, etc.	1-27	Towe	March 8	concurred in	3-10
SB 43	provide state, counties, towns, other local gvt. entities and the officers agents, employees, etc. immunity from suit,	1-27	Towe	March 8	concurred in	3-10
SB 53	authorize establishment of self-insurance programs for state & local gvt with guidelines, etc. judgments against, etc.	1-27	Towe	March 8	concurred in amended	3/22
HB 559	to submit to the qualified electors of Montana an amendment etc. const. age of majority to 19 years	1-27	Teague	Thursday 3rd	do pass	2-7

JUDICIARY COMMITTEE
March 8, 1977

The regular meeting of the House Judiciary Committee was held on Tuesday, March 8 at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana. Chairmam Scully presided. All members were present with the exception of Representative Colburn.

Scheduled for hearing were Senate Bills 40, 42, 43 and 53.

SENATOR TOWE, sponsor of the bills asked that Senate Bill 41 be included, since it is part of the package of bills. The committee agreed to hear this bill along with the others.

SENATOR TOWE:
These bills are part of the interim study. The new Montana constitution spelled out that there would be no sovereign immunity. He discussed the reason for sovereign immunity and how it came about, the fact that in common law the king could do no wrong. He explained the insurance and the $25,000 deductible. The bills dealing with constitutional amendments must have 2/3 of the legislature voting in order to pass. He said he felt the approach to drafting the bills was somewhat unique. We are preserving the right to sue, however we are limiting the amount of damages in some instances. Each of the bills does a separate thing which I will explain.

1. #43 is the main bill.
2. #53 is the 2nd bill and involves a self-insurance fund.
3. #41 sets a limit on attorneys fees.
4. #42 reinserts certain portions of the constitution.
5. #40 is a clean-up or repealer.

First, #43. He discussed the tangible and intangible, the economic and non-economic things you can sue for. The non-economic is not allowed for.

#53 is the self-insurance bill. It allows for a deductible self-insurance program and reserve. He explained the sources and stated that if the judgment cannot be paid from these four sources it cannot be paid.

#41 regulates the attorneys fees. The attorney must file a claim. The district court may regulate the amount of the attorneys fee.

#42 concerns the constitutional amendments needed. One of the existing things in the law that allow someone to sue are invalid in the new constitution. They must be reinstated with a 2/3 vote.

#40 repeals and revises certain sections of the law. He went through the bill and explained the general practice of law.

The Senator said that SB 42 and 43 need 2/3 vote in order to pass. He wished to remind the committee of this. The Senator also said they had not found anyone opposed to any of these bills.

PROPONENT MIKE YOUNG, DEPARTMENT OF STATE ADMINISTRATION:
We would like to thank the committee for the amount of time they have spent. As a practical matter we will still insure for the same amount of money which is 1 million dollars. We favor the bills.

PROPONENT, GLEN DRAKE, LEAGUE OF CITIES & TOWNS & AMERICAN INSURANCE CORPORATION:
We are in support of the bills.

PROPONENT, GREG McCURDY:
I am in favor of the bills.

PROPONENT, BOISE CLARK, INDEPENDENT INSURANCE AGENTS:
I would like to reiterate the fine work that has been done by the sub-committee. There are just a couple of comments I want to make. He talked about the study on government liability risks. Attached is a copy of the testimony on each of the bills by Mr. Clark.

REPERSENTATIVE KEYSER:
on page 8 of SB 53, how long can the state or county delay making the payment.

SENATOR TOWE:
The payment may be delayed but if there is an abuse in any area, we may have to put in an amendment to change that.

REPRESENTATIVE EUDAILY and SENATOR TOWE:
discussion about the special levy up to 10 mills. Discussion about the insurance costs and how the reduced liability might reduce the price.

No further questions the hearing closed on the series of bills.

The meeting adjourned at 8:40 and the committee then went into executive session.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 22, 1977

The executive session of the House Judiciary Committee was called to order by Chairman Scully at 8:45 a.m. in room 436 of the Capitol Building, Helena, Montana. All members were present except the following: Representatives Colburn, Conroy, Courtney, Kennerly and Seifert.

HOUSE JOINT RESOLUTION #93:
REPRESENTATIVE LORY moved "do not pass". REPRESENTATIVE DUSSAULT moved a sub-stitute motion "do pass". The motion was tied with the bill going out of committee with no recommendation.

SENATE BILL #33:
REPRESENTATIVE LORY reported from the sub-committee that the bill be concurred in, and moved the motion. The motion carried with the vote unanimous.

SENATE BILL #37:
REPRESENTATIVE RAMIREZ reported he did not have the amendments ready for presentation to the committee. He will have them Friday.

SENATE BILL #34:
REPRESENTATIVE LORY moved that the sub-committee report of "be concurred in" be adopted. The motion carried with the vote unanimous.

SENATE BILL #53:
REPRESENTATIVE KEYSER moved to amend. The amendments as proposed were voted upon and the motion carried with vote unanimous. REPRESENTATIVE LORY moved "be concurred in as amended". The motion carried with the vote unanimous. (amendments attached)

SENATE BILL #216:
REPRESENTATIVE DAY reported the water sub-committee had voted to table this bill. The Judiciary Committee accepted the committee report to table and the motion carried with the vote unanimous.

SENATE BILLS #413 and 419:
These bills are still in sub-committee for work and study. The committee will report on Friday.

SENATE BILL #385:
REPRESENTATIVE KEYSER moved be concurred in. The motion carried with the vote unanimous.

REPRESENTATIVE HOLMES came in late to committee and moved the committee reconsider its action on Senate Bill #385. The motion failed with only one yes vote. Representative Holmes asked that she be recorded as a no vote on this bill.

SENATE BILL #27:
REPRESENTATIVE RAMIREZ moved to amend on page 36. The motion carried with the vote unanimous. REPRESENTATIVE LORY moved to amend on pages

94 and 95. The motion carried with the vote unanimous. REPRESENTATIVE HAND moved "be concurred in as amended". The motion carried with the vote unanimous. (amendments attached)

SENATE BILL #9:
REPRESENTATIVE RAMIREZ moved to amend. He explained the proposed amendments. The motion carried with the vote unanimous. REPRESENTATIVE RAMIREZ moved "be concurred in as amended. The motion carried with the vote unanimous.

CHAIRMAN SCULLY appointed the following members to carry senate bills.

SB 33	Representative Hand
SB 34	Representative Eudaily
SB 53	Representative Lory
SB 9	Representative Scully
SB 27	Representative Hand
SB 385	Representative Ramirez

CHAIRMAN SCULLY announced there would be several topics presented for interim studies.

1. HJR 59 - legal fees & legal services in the state

2. Water adjudication process - if 809 fails
   (also the preference system)

3. Parent and child rights for adoptive foster parents

4. Overall sentencing functions
   The supreme court is going to do one also (not as comprehensive)

5. Mandatory liability and no-fault insurance

There being no further discussion or business to consider at this time the meeting adjourned at 9:40 a.m.

_____
John P. Scully, Chairman

_____
Mary Ellen Connelly, Secretary

SENATE BILL NO. 53

INTRODUCED BY TOWE, TURNAGE

(INTERIM COMMITTEE ON JUDICIARY BILL)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE ESTABLISHMENT OF SELF-INSURANCE PROGRAMS FOR STATE AND LOCAL GOVERNMENTAL ENTITIES WITH CERTAIN GUIDELINES; TO CLARIFY THE MEANS BY WHICH CLAIMS AGAINST GOVERNMENTAL ENTITIES MAY BE SETTLED; TO CLARIFY THE MEANS BY WHICH JUDGMENTS AGAINST GOVERNMENTAL ENTITIES MAY BE SATISFIED; AMENDING SECTIONS 82-4303, 82-4305, 82-4306, 82-4309, 82-4311, 82-4312, 82-4318, AND 82-4319, R.C.M. 1947; AND REPEALING SECTIONS 82-4313 THROUGH 82-4317, 82-4326, 83-701 THROUGH 83-706, 83-706.1, AND 83-707, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4303, R.C.M. 1947, is amended to read as follows:

"82-4303. Comprehensive insurance plan for state -- risks insured -- deductible insurance. (1) The department of administration ~~shall be~~ is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined ~~herein~~ in this chapter.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and ~~shall have the authority to~~ may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, and fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part. ~~Such a plan shall never have a deductible amount in excess of twenty-five thousand dollars ($25,000) per occurrence, and shall contain provisions allowing for an aggregate deductible amount not to exceed two hundred fifty thousand dollars ($250,000) annually under each type of insurance as enumerated in the preceding paragraph.~~"

Section 2. Section 82-4305, R.C.M. 1947, is amended to read as follows:

"82-4305. Apportionment of costs -- creation of deductible reserve ~~if deductible plan elected.~~ (1) The department of administration shall apportion the costs of all insurance purchased under this ~~act~~ chapter to the

individual state participants, and the costs shall be paid to the department subject to appropriations by the legislature.

(2) The department of administration, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan, until such time as a deductible reserve is established. ~~in the amount of two hundred fifty thousand dollars ($250,000), the amount of the total aggregate annual deductible, is created.~~ In each subsequent year, the department ~~shall be authorized to~~ may charge a sufficient amount over the actual cost of the deductible insurance to replenish such deductible reserves.

(3) The department of administration may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion, the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund may be used only to pay claims under this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the

fund."

Section 3. Section 82-4306, R.C.M. 1947, is amended to read as follows:

"82-4306. Political subdivisions. (1) All political subdivisions of the state ~~shall have the authority to~~ may procure insurance ~~under this act~~ separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose. Proceeds of the fund may be used only to pay claims under this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund."

Section 4. Section 82-4309, R.C.M. 1947, is amended to

read as follows:

"82-4309. Political subdivision tax levy to pay premiums. Notwithstanding any provisions of law to the contrary, all political subdivisions ~~shall have authority to~~ may levy an annual property tax in the amount necessary to ~~pay~~ fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby~~:~~, ~~provided~~ that the revenues derived therefrom may not be used for any other purpose."

Section 5. Section 82-4311, R.C.M. 1947, is amended to read as follows:

"82-4311. Filing of claims against state -- time of filing. All claims against the state arising under the provisions of this act shall be presented to and filed with the ~~secretary of state within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later. A fee of ten dollars ($10) shall be paid to the secretary of state at the time the claim is presented for filing~~ department of administration."

Section 6. Section 82-4312, R.C.M. 1947, is amended to read as follows:

"82-4312. Filing of claims against political

subdivisions -- time for filing. All claims against a political subdivision arising under the provisions of this act shall be presented to and filed with the clerk or secretary of the political subdivision ~~within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later.~~"

Section 7. There is a new R.C.M. section that reads as follows:

Limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

Section 8. Section 82-4318, R.C.M. 1947, is amended to read as follows:

"82-4318. Compromise or settlement of claim against political subdivision. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any. A settlement involving a self-insurance reserve fund or deductible reserve fund must be approved by the district court where the claim is filed."

Section 9. Section 82-4319, R.C.M. 1947, is amended to read as follows:

"82-4319. Compromise or settlement of claim against

state. The department of administration may compromise and settle any claim allowed by this act, subject to the terms of insurance, if any. A settlement involving the self-insurance reserve fund or deductible reserve fund must be approved by the district court of Lewis and Clark County."

Section 10. There is a new R.C.M. section that reads as follows:

Judgments against governmental entities except state -- how satisfied. (1) A political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(a) insurance;

(b) the general fund or any other funds legally available to the governing body;

(c) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

(d) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to

amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

(2) ~~No penalty or interest may be assessed against any governmental entity as a result of a delayed payment of a judgment liability.~~ IF A GOVERNMENTAL ENTITY PAYS A JUDGMENT WITHIN 2 YEARS AFTER THE DAY ON WHICH THE JUDGMENT IS ENTERED, NO PENALTY OR INTEREST MAY BE ASSESSED AGAINST THE GOVERNMENTAL ENTITY.

Section 11. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Repealer. Sections 82-4313 through 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and 83-707, R.C.M. 1947, are repealed.

-End-